

ORDER NO. 1499

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Express Mail & Priority Mail
Express Mail & Priority Mail Contract 10

Docket No. MC2012-54

Competitive Product Prices
Express Mail & Priority Mail Contract 10
(MC2012-54)
Negotiated Service Agreement

Docket No. CP2012-66

ORDER ADDING EXPRESS MAIL & PRIORITY MAIL CONTRACT 10
TO THE COMPETITIVE PRODUCT LIST

(Issued October 11, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 10 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 10 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

II. BACKGROUND

On September 27, 2012, in accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Express Mail & Priority Mail Contract 10 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. 3633(a), a copy of Governors’ Decision No. 11-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On September 28, 2012, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

III. COMMENTS

The Public Representative filed comments on October 5, 2012.⁵ No other interested person submitted comments. The Public Representative states that he has

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement at 6-7, October 20, 2010.

⁴ Notice and Order Concerning Addition of Express Mail & Priority Mail Contract 10 to the Competitive Product List, September 28, 2012 (Order No. 1486).

reviewed the Request, supporting documentation, and supporting financial models. *Id.* at 2. He believes that the Postal Service has demonstrated that the contract appears to satisfy the requirements of 39 U.S.C. 3633(a). *Id.* He expresses concern, however, that the data provided does not demonstrate that the contract will cover its costs in the second and third years of the contract. *Id.* at 3. As mitigation for this concern, the Public Representative notes that the contract contains an annual adjustment mechanism that may allow the contract to cover its costs in the second and third year. *Id.* He also acknowledges that the Postal Service is responsible for filing the financial results of the contract in each year's Annual Compliance Report, which will enable the Commission to ensure that the requirements of 39 U.S.C. 3633(a) continue to be met. *Id.*

The Public Representative concludes that Express Mail & Priority Mail Contract 10 should be added to the competitive product list. *Id.* at 2.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request entail assigning Express Mail & Priority Mail Contract 10 to either the market dominant or competitive product list. See 39 U.S.C. 3642(b)(1); 39 CFR 3020.34. In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. 3642(b)(3); 39 CFR 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Express Mail and Priority Mail service in a highly competitive market, that other shippers who provide similar services

⁵ Public Representative Comments on Postal Service Request to Add Express Mail & Priority Mail Contract 10 to Competitive Product List, October 5, 2012 (PR Comments).

constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Express Mail & Priority Mail Contract 10 is appropriately classified as competitive and added to the competitive product list.

Cost considerations. Because Express Mail & Priority Mail Contract 10 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. 3633(a); 39 CFR 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the contract should satisfy the requirements of 39 U.S.C. 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract should cover its costs during its first year. The Public Representative raises concerns about the lack of data for subsequent years of the contract. PR Comments at 3. As noted by the Public Representative, however, the contract includes an annual rate adjustment provision. *Id.*; *see also* Request, Attachment B at 2. This provision should allow the contract's revenues to cover costs in years two and three. Thus, the Commission finds that Express Mail & Priority Mail Contract 10 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination proceedings, the Commission will review the contract's financial performance for consistency with section 3633(a).

Other considerations. By its terms, the contract becomes effective on the date that the Commission issues all necessary regulatory approvals. Request, Attachment B

at 2. The contract expires 3 years from the effective date, unless, among other things, either party terminates the agreement with written notice to the other party. *Id.*⁶

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by zone associated with the contract.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 10 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Express Mail & Priority Mail Contract 10 (MC2012-54 and CP2012-66) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the instant contract ends prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by zone associated with the Agreement.

⁶ Under the terms of the contract, the customer may terminate the agreement with 90 days' notice, while the Postal Service may terminate with 180 days. *Id.*

4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2012-54 and CP2012-66. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail & Priority Mail Contract 10

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